IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
November 20, 2008 Session

STATE OF TENNESSEE v. RONALLEN HARDY

Direct Appeal from the Circuit Court for Rutherford County
No. F-58763C Joseph Dailey, Judge

No. M2008-00381-CCA-R3-CD - Filed August 31, 2009

A Rutherford County Circuit Court jury convicted the appellant, Ronallen Hardy, of first degree premeditated murder, first degree felony murder, especially aggravated robbery, aggravated burglary, conspiracy to commit especially aggravated robbery, and conspiracy to commit especially aggravated burglary. The trial court merged the first degree murder convictions, and the appellant was sentenced to life without parole. The trial court sentenced the appellant as a standard offender to twenty-two years for especially aggravated robbery, ten years for conspiracy to commit especially aggravated robbery, five years for aggravated burglary, and three years for conspiracy to commit aggravated burglary and ordered the sentences to be served concurrently with each other and consecutively to the life-without-parole sentence. On appeal, the appellant contends that the trial court erred by admitting into evidence the statement he gave to police. Upon review, we conclude that the trial court properly admitted the statement into evidence. However, as a matter of plain error, the appellant's conspiracy convictions violate the Double Jeopardy Clauses of the United States and Tennessee Constitutions and Tennessee Code Annotated section 39-12-103(c). Accordingly, we merge the appellant's conspiracy convictions into a single conviction and remand the case to the trial court for the correction of the judgments to reflect the merger of the conspiracy convictions. We affirm the judgments of the trial court in all other respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court are Affirmed in Part, Modified in Part, and the Case is Remanded.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Jerry E. Farmer, Murfreesboro, Tennessee, for the appellant, Ronallen Hardy.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and Trevor H. Lynch, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The appellant's convictions resulted from his involvement in the robbery and shooting death of Randy Betts in December 2005. Before trial, the appellant filed motions to suppress a taped statement he made to police in which he admitted that he, Aldrick "Scoot" Lillard, and Vanessa Claude went to the victim's house to take the victim's guns. According to the appellant's statement, he and Claude waited in the car while Lillard knocked on the door of the victim's home. Shortly thereafter, the appellant heard two gunshots and left the car to look into the house. The appellant described the victim's appearance, injury, and location; however, he claimed that he only looked into the house. He said that he did not go into the house because his foot was bleeding from a prior gunshot wound he had received and that he did not want to leave his DNA at the scene. The appellant said that Claude pulled the car into the yard and that Lillard spent around forty-five minutes loading guns from the victim's home into the car. Lillard told the appellant that he shot the victim because the victim was a "snitch." The trial court overruled the appellant's motions to suppress and allowed the jury to hear the appellant's statement.[1] The sole issue the appellant raises on appeal is the trial court's admission of his statement into evidence.

At the suppression hearing, Detective Ty Downing of the Rutherford County Sheriff's Department testified that he and another Rutherford County detective interviewed the appellant while the appellant was being held in the Davidson County Jail on an unrelated charge. He explained that Detectives Chastain and Burke from Davidson County were also present because the appellant and Lillard were suspects in the burglary of Detective Chastain's home. One of Detective Chastain's guns had been recovered from a car the appellant's brother was driving, and some of the other guns that had been taken during the Chastain burglary were recovered from Lillard's and Vanessa Claude's home. At the time of the interview, the detectives knew the gun recovered from the appellant's brother had been stolen from Detective Chastain, but they had not yet confirmed that the gun was the weapon used to kill Randy Betts.

At the beginning of the interview, Detective Chastain told the appellant that the Rutherford County detectives were present because Detective Chastain could not work his own case and because his guns were in Rutherford County. Detective Chastain then advised the appellant of his Miranda rights. He emphasized to the appellant that he could stop answering at anytime, stating as follows:

> Here's a real important sentence: I also understand that at any time I choose to stop answering questions the interview will cease. In other words, if you don't like the way things are going you can say, "I don't want to talk no more."

[1] Parts of the tape, indicating that the gun used to kill the victim was stolen during a prior burglary that the appellant helped plan, were redacted.

The appellant signed and initialed a waiver of rights form.

Detective Chastain then questioned the appellant extensively about the location and identity of persons who may have received the guns stolen from Detective Chastain's home. While pressing the appellant to divulge information about the stolen guns, the following exchange occurred:

> Detective Chastain: That's all I'm sayin'. Everybody is gonna get a get out of jail free card if they have a gun of mine okay? I'll take it no questions asked. They can deliver 'em to somebody no questions asked, okay? And that's the deal I've given. But the problem is if I get any further in this investigation than today, and I catch some of them with it, I'm gonna charge 'em with it. Everybody's gonna get charged with it. Okay. Like I said your brother's still sittin' on that weed from the house. I'm trying to help him out, but I'm getting no . . .
>
> [The appellant]: Nah, all that's mine.
>
> Detective Chastain: It's in his house, though, see what I'm saying. The lease is under his name. I'm not wanting to go there.
>
> [The appellant]: It's still mine, I was in there.
>
> Detective Chastain: I'm not wanting to go there; you just need to help me out a little bit more. I don't think you're being a hundred percent.
>
> [The appellant]: I done took you all up to Murfreesboro where they had all the guns stashed at where they had already got 'em.
>
> Detective Chastain: They've got two of mine. I'm just trying to figure out . . . . Where's the other thirteen at? I'm just trying to figure that out.
>
> [The appellant]: I told you everything was up in Rutherford County in the trunk.
>
> Detective Chastain: Hmm, you said the hotel first.
>
> [The appellant]: I told you they was up in the trunk in Rutherford County; he was trading them with the dude named Josh. You know who Josh is, but you can't find him. If you go there you probably find some of them.

Later in the interview, without advising the appellant that the questioning was turning to his suspected involvement in the robbery and murder of Randy Betts, detectives questioned him about his possession and handling of some of the guns taken from Betts. The appellant said that Lillard had forty or fifty guns in a trunk and allowed him to pick out certain guns that he wanted. The following discussion transpired after the appellant denied handling all of the guns in the trunk:

> Detective Downing: Reason I ask is because we got quite a few of them back and so we would need to explain as to why your fingerprints would be on them. That's neither here nor there.
>
> . . . .
>
> Detective Chastain: You might want to tell them about where those guns came from that he was just describing.
>
> Detective Downing: Well, I'm pretty sure he probably knows. We've been talking to Vanessa and Scoot. You know what Scoot's into. Obviously, word travels; you know where Scoot is.
>
> [The appellant]: Yeah, he told me.
>
> Detective Downing: O.k. well, Scoot's been talking to us. Anything you want to tell us about that?
>
> [The appellant]: . . . Tell me what's on your mind man?
>
> Detective Downing: I think you know what's on my mind, brother. Scoot's "diming" you out left and right, brother.
>
> Detective Chastain: I told you he put you in knee deep in mine. I mean going in, buying ham for the dog, I mean . . .
>
> Detective Downing: He put you deep in ours; reason I asked you about if you handled those guns or not, I don't care if you handled those guns or not . . . I want to give you an opportunity to explain how you handled all those guns, what your involvement really is with those guns. If Scoot's got you "snaked up" in something that you don't need to be "snaked up" in, this is the time you need to talk about it. Because we've been talking to Vanessa . . .
>
> Detective Chastain: She's been trying to turn this . . . around on you.

Detective Downing: Vanessa's working a deal right now. When we leave here, that's it. That's why I was asking you about when you were riding with Vanessa. We got your prints in that van, you also understand that we can date prints by fibers and stuff. . . . We can put you in that van in December.

Detective Chastain: This is the deal, man. Y'all got hooked up together and thought about where y'all can get guns; okay, y'all hit me. You willingly and cooperatively have told me . . . you were gonna help me get my guns back. And what you told me was true. You went to Rutherford County. . . . You didn't have a name, a nickname, and you couldn't find the place for me, but through some police work we were able to locate Scoot and all those other people, and they were able to recover both of my guns from what you told us, okay. But you have to realize he's in a problem; you're in a problem; and, all it looks like is these two guys have gotten together and decided where could we get some guns? And then you hit me, and here I'll come to court and testify: yeah, both of them admitted to me that the only reason they wanted in my house was my guns. And lo and behold something happens up in Rutherford County to somebody and all that was about was a bunch of guns. Well, he's put you in that, he's put you in my burglary and to tell you the truth I don't believe some of the stuff he's saying, okay. Some of the stuff . . . .

. . . .

Detective Downing: . . . [T]his is your opportunity to tell us about what Scoot got you involved in.

[The appellant]: (unintelligible) . . . You ain't telling me nothing. . .

Detective Downing: We know how it went. We know this wasn't intentional, and I think Scoot's probably the bad guy in this. But I'm telling you right now, he's talking. And Vanessa the little . . . girl that drove, she's working a deal.

Detective Chastain: I was present . . . when Scoot put you there and in his words "I ain't the shooter." In his words, "I ain't the shooter." He puts two people there: you and him, and he ain't the shooter.

Detective Downing: [Stuff] goes bad, man

[The appellant]: Yeah I know, it's really [messed] up. Who is YG?

Detective Downing: What?

[The appellant]: YG

Detective Downing: Well, this is your opportunity to tell us your side of the story.

[The appellant]: . . . . Right now . . . .

Detective Downing: I know about that.

[The appellant]: I mean, YG . . . know what I'm saying . . .

. . . .

[The appellant]: That's how everything popped off.

Detective Downing: Okay.

Detective Chastain: You got to speak English to him, man.

Detective Downing: No, I know what he's talking about. YG is Scoot's buddy. That's why we're talking to you. Because we think Scoot's got you "snaked up" in this. Do you know what I mean by "snaked up"? I think Scoot said "hey, I know something real easy, let's go do it." Lo and behold, [stuff] went bad and guess who's in the middle of it . . . [the appellant]. Tell us about what happened at that house.

[The appellant]: I wasn't up there man . . .

Detective Downing: Hmmm

[The appellant]: . . He was tellin' me about . . . ain't home.

Detective Downing: This is your opportunity . . . . Like I said, . . . Vanessa's working against you right now. When my partner and I leave here . . .

[The appellant]: . . If you're gonna charge me, charge me. You can't scare me.

. . . .

Detective Downing: Don't go down that road, you hurt yourself.

[The appellant]: . . . Scoot . . . he's throwing some [stuff] on me up here . . .

. . . .

[The appellant]: . . . Y'all go ahead and throw the whole pack on me and let Scoot go free, that's cool . . .

Detectives assured the appellant that Lillard was not going free, and the appellant told the detectives that Lillard shot the victim while he and Coleman waited in the car. He also told them that after he heard the shots, he went to the door of the victim's home and saw the victim lying in the doorway. The appellant denied going into the victim's house but said Lillard spent about forty-five minutes gathering the victim's guns and other belongings.

II. Analysis

A. Suppression Based on Violation of Co-defendant's Rights

Initially, the appellant challenges the admission of his statement on the grounds that police violated the constitutional rights of his co-defendant, Aldrick "Scoot" Lillard, when they obtained Lillard's statement implicating the appellant. The appellant argues that his confession is "fruit of the poisonous tree" because officers would not have known to question him about the offenses in the absence of Lillard's unconstitutionally obtained statement. The State argues that the appellant lacks standing to assert the violation of Lillard's Fourth Amendment rights and that the appellant would have inevitably been a suspect even without Lillard's statement. In support, the State points out that the appellant had become a suspect via the recovery of weapons and the questioning of the other co-defendant, Vanessa Claude, and that the murder weapon was recovered from the appellant's brother, who told police he obtained it from the appellant. In his reply brief, the appellant counters that he is not asserting Lillard's Fourth Amendment rights but rather seeking to vindicate his own due process rights by applying the exclusionary rule to the fruits of police misconduct which violated Lillard's Fifth Amendment rights. He also asserts that the record does not reflect whether Lillard's statement was taken before or after the discovery of the murder weapon in the appellant's brother's possession and that it is, therefore, impossible for this court to determine if the appellant's involvement would have been discovered inevitably.

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. See State v. Walton, 41 S.W.3d 75, 81 (Tenn.

2001). Furthermore, the State, as the prevailing party, is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23. Moreover, we note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998).

In support of his motion to suppress his confession based on alleged police misconduct in obtaining Lillard's statement, the appellant offered a copy of Lillard's police interview. The appellant argued that police gave Lillard false legal advice when they indicated he would not be as culpable for murder if someone else shot Betts during the robbery. The appellant asserts that Lillard's statement implicating the appellant in the robbery and murder was coerced in violation of Lillard's constitutional rights and that use of the statement to develop the appellant as a suspect was a violation of the appellant's due process rights. The trial court made no factual findings with respect to the appellant's motion to suppress his statement based on the violation of his co-defendant's rights but concluded, as a matter of law, that the appellant lacked standing to attack the legality of statements given by his co-defendant. We agree that the appellant lacks standing to assert the violation of Lillard's constitutional rights. We also conclude that the appellant's attempt to circumvent his lack of standing by framing his argument in terms of his own due process rights must fail.

"Fourth Amendment rights are personal rights, which like some other constitutional rights, may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133-34, 99 S. Ct. 421, 425 (1978) (quoting Alderman v. United States, 394 U.S. 165, 174, 89 S. Ct. 961, 966-67 (1969)). Thus, "suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence. Co-conspirators and co-defendants have been accorded no special standing." United States v. Padilla, 508 U.S. 77, 81-82, 113 S. Ct. 1936, 1938 (1993) (per curiam).

The Fifth Amendment privilege against self-incrimination is likewise personal and cannot be vicariously asserted. Rogers v. United States, 340 U.S. 367, 371, 71 S. Ct. 438, 441 (1951); State v. Austin, 87 S.W.3d 447, 479 (Tenn. 2002) (adopting and incorporating this court's opinion). "A criminal defendant lacks standing to complain of the violation of a third party's Fifth Amendment privilege against self-incrimination." Austin, 87 S.W.3d at 479.

The appellant argues that the instant case is distinguishable from Austin and others that hold a defendant lacks standing to assert a violation of a co-defendant's Fifth Amendment rights because the alleged violation of Lillard's rights occurred as the result of police misconduct. The appellant argues that the alleged police misconduct in obtaining Lillard's statement amounted to a violation of the appellant's due process rights and that he, therefore, has standing to assert the violation.

In support of his position, the appellant cites Clanton v. Cooper, 129 F.3d 1147 (10th Cir. 1997). In Clanton, the plaintiff filed a civil rights suit under section 1983 alleging that a fire marshal violated her constitutional due process rights when he (1) swore to the veracity of an informant's confession in support of the plaintiff's arrest warrant while knowing the confession was false; (2) knowingly transmitted false statements over the National Crime Information Center computer system thereby lengthening the period of the plaintiff's incarceration; and (3) coerced a confession from the plaintiff's nephew implicating the plaintiff. Although the plaintiff in Clanton was never indicted or formally charged with arson, she asserted that she was arrested and held in jail as the result of the fire marshal's actions in violation of her due process rights.

In determining that Clanton had standing in the civil rights action to challenge the confession her nephew made implicating her, the Tenth Circuit Court of Appeals reasoned that a confession coerced from another person may be so unreliable that the government's use of it against the accused violates the accused's due process rights. Clanton, 129 F.3d at 1157-58; see also Jackson v. Denno, 378 U.S. 368, 385-85, 84 S. Ct. 1774, 1785-86 (1964). Clanton had standing to contest the voluntariness of her nephew's confession "not based on any violation of his rights, but rather as a violation of her own Fourteenth Amendment right to due process." Clanton, 129 F.3d at 1158.

The appellant's reliance on Clanton is misplaced. The allegedly coerced confession in Clanton was used to have Clanton arrested and jailed without any formal charges ever being filed. There is no evidence in the present case to indicate that police used Lillard's statement in any way to violate the appellant's due process rights. Lillard's statement was neither introduced at the appellant's trial nor used to justify his arrest. The record demonstrates that the appellant was in custody on an unrelated matter at the time he was questioned and that he admitted his involvement in the Betts murder and robbery. Although we acknowledge that Lillard's statement may have been used as an investigative tool to question the appellant or to identify him as a suspect in this case, such use does not amount to a violation of the appellant's due process rights. In sum, the appellant lacks standing to assert Lillard's Fourth and Fifth Amendment rights, and he has failed to demonstrate a violation of his own due process rights.

B. Voluntariness of Statement

Next, the appellant challenges the voluntariness of his confession. Detectives Chastain and Downing testified at the suppression hearings, and the recording of the appellant's statement was also introduced. In its written order denying the appellant's motion to suppress, the trial court noted that the appellant waived his Miranda rights. The court found that the appellant "was aware of his rights, and remained aware of his rights throughout the continuous interrogation." After reviewing "the record, the totality of the circumstances, [the appellant's] motion, the interrogation CD, and the [appellant's] age, education and mental and physical condition," the court concluded that the appellant's confession was voluntary. We agree with the trial court's assessment.

The Fifth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution generally provide a privilege against self-incrimination to individuals

accused of criminal activity, thus necessitating our examination of the voluntariness of a statement taken during custodial interrogation. State v. Callahan, 979 S.W.2d 577, 581 (Tenn. 1998). Specifically, for a confession to be admissible, it must be "'free and voluntary; that is, [it] must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.'" State v. Smith, 933 S.W.2d 450, 455 (Tenn. 1996) (quoting Bram v. United States, 168 U.S. 532, 542-43, 18 S. Ct. 183, 187 (1897)). Further, to determine the admissibility of a confession, "the particular circumstances of each case must be examined as a whole." Id. To this end, "'[o]nce warnings have been given, . . . [i]f the individual indicates in any manner, at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. At that point, he has shown that he intended to exercise his Fifth Amendment privilege." State v. Crump, 834 S.W.2d 265, 269 (Tenn. 1992) (quoting Miranda v. Arizona, 384 U.S. 436, 473-74, 86 S. Ct. 1602, 1627 (1966)).

If, prior to making a statement, the police inform the accused of his Miranda rights and the accused proceeds to waive those rights knowingly and voluntarily, the statement is then admissible against the accused due to the valid waiver of the privilege against self-incrimination. Callahan, 979 S.W.2d at 581 (citing Miranda, 384 U.S. at 444, 86 S. Ct. at 1612). Furthermore, this court has stated as follows:

> Coercive police activity is a necessary prerequisite in order to find a confession involuntary. The crucial question is whether the behavior of the state's officials was "such as to overbear [the appellant's] will to resist and bring about confessions not freely self-determined." The question must be answered with "complete disregard" of whether or not the accused was truthful in the statement.

State v. Phillips, 30 S.W.3d 372, 377 (Tenn. Crim. App. 2000) (citations omitted).

To establish a valid waiver of Miranda rights, "the State need only prove waiver by a preponderance of the evidence. In determining whether the State has satisfied that burden of proof, courts must look to the totality of the circumstances." State v. Bush, 942 S.W.2d 489, 500 (Tenn. 1997) (citation omitted). In the course of our examination, we consider the following factors in determining the voluntariness of a confession: the appellant's age; education or intelligence level; previous experience with the police; the repeated and prolonged nature of the interrogation; the length of detention prior to the confession; the lack of any advice as to constitutional rights; the unnecessary delay in bringing the appellant before the magistrate prior to the confession; the appellant's intoxication or ill health at the time the confession was given; deprivation of food, sleep, or medical attention; any physical abuse; and threats of abuse. State v. Huddleston, 924 S.W.2d 666, 671 (Tenn. 1996). Proof that an accused was made aware of his Miranda rights, although not conclusive, weighs in favor of the admission of a confession into evidence. See State v. Carter, 16 S.W.3d 762, 767 (Tenn. 2000).

The appellant does not dispute that he was advised of his Miranda rights and that he agreed both orally and in writing to waive his Miranda rights in order to be questioned about the burglary of Detective Chastain's home. However, he contends that officers led him to believe that the purpose of the questioning was the investigation of the Chastain burglary and that he understood that if he helped Detective Chastain, he would get a "get out of jail free" card. He further argues that the detectives misled him to believe that they had scientific evidence linking him to the Betts homicide and robbery when they told him they had prints from the van that they could date using "fibers and stuff." He asserts that officers "impliedly" gave him false legal advice by indicating that they thought Lillard had him "snaked up" in something and that he would be helping his own defense by telling them about it.

Initially, we note that Detective Chastain's failure to explicitly inform the appellant that he would be questioned about the Betts murder and robbery "could not affect [his] decision to waive his Fifth Amendment privilege in a constitutionally significant manner." Colorado v. Spring, 479 U.S. 564, 577, 107 S. Ct. 851, 859 (1987). Police were not required to advise the appellant of all of the charges he was facing. State v. Green, 995 S.W.2d 591, 599 (Tenn. Crim. App. 1998) (citing Colorado v. Spring, 479 U.S. 564, 107 S. Ct. 851 (1987)). As the Supreme Court explained in Spring, the Constitution does not "require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights." 479 U.S. at 576-77, 107 S. Ct. at 859 (quoting Moran v. Burbine, 475 U.S. 412, 422, 106 S. Ct. 1135, 1141 (1986)). The trial court found that the appellant was aware of his rights and remained aware of his rights throughout the interrogation. We agree that the voluntariness of the appellant's statement was not diminished by the fact that detectives questioned him about the Betts murder and robbery.

Detective Chastain's "get out of jail free" offer with respect to the burglary of his home also does not render the appellant's statement involuntary. Taken in context, Detective Chastain's offer only related to the recovery of his guns. Detective Chastain specifically said that the stolen guns could be returned to him "no questions asked," and the statement was made in the midst of questioning concerning the location of the stolen guns and the identity of persons who might possess them. Furthermore, the appellant's understanding that the "get out of jail" offer only extended to the Chastain theft and burglary is evident from the statements the appellant made after questioning turned to the Betts murder and robbery. Once the questioning turned to the Betts murder and robbery, the appellant challenged the detectives to charge him and told them to "throw the whole pack" on him to "let Scoot go free."

Next, the appellant challenges the admission of his statement on the grounds that officers were deceptive when they told him they could place him in Vanessa Claude's van during the month of the crime by dating hair and fiber evidence. In Frazier v. Cupp, 394 U.S. 731, 89 S. Ct. 1420 (1969), police obtained a full confession from Frazier after they misrepresented to him that his co-defendant confessed. Viewing the totality of the circumstances, the Supreme Court upheld the admission of Frazier's statement, concluding that the misrepresentation was insufficient to make the otherwise voluntary confession inadmissible. We likewise agree with the trial court's assessment in the present case. Under the totality of the circumstances, Detective Downing's misrepresentation about being

able to date the appellant's prints in the van was not sufficient to overbear the appellant's will so as to render his confession involuntary.

Finally, the appellant argues that his confession is involuntary because officers impliedly gave him false legal advice when they told him that he would benefit from giving a statement if Lillard had him "snaked up" in something. The trial court found that "the police officers did not give false legal advice" to the appellant during the interrogation. We agree with the trial court that the officers' comments did not amount to false legal advice. Further, we note that such vague statements encouraging cooperation are not sufficient to overbear an accused's will so as to render a statement involuntary. See State v. Johnson, 765 S.W.2d 780, 782 (Tenn. Crim. App. 1988); State v. Clarence David Schreane, No. E2005-0520-CCA-R3-CD, 2006 WL 89134, at *5 (Tenn. Crim. App. at Knoxville, Apr. 5, 2006); State v. Mario Pendergrass, No. M1999-02532-CCA-R3-CD, 2002 WL 517133 at *11 (Tenn. Crim. App. at Nashville, Apr. 5, 2002).

Based on our review of the recording of the appellant's statement and the entire record in this case, we conclude that the trial court properly found that the appellant's statement was given voluntarily. Accordingly, we affirm the trial court's denial of the appellant's motions to suppress.

C. Conspiracy Convictions

Pursuant to Tennessee Rule of Appellate Procedure 36(b), "[w]hen necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal." In the present case, the appellant's two conspiracy convictions violate principles of double jeopardy, so the appellant's conviction for conspiracy to commit aggravated burglary must be vacated.

The Double Jeopardy Clauses of the United States and Tennessee constitutions protect an accused from (1) a second prosecution following an acquittal; (2) a second prosecution following conviction; and (3) multiple punishments for the same offense. State v. Denton, 938 S.W.2d 373, 378 (Tenn. 1996). The present case involves the third category. "The key issue" in our analysis "is 'whether the legislature intended cumulative punishment.'" State v. Godsey, 60 S.W.3d 759, 777 (Tenn. 2001) (quoting State v. Blackburn, 694 S.W.2d 934, 936 (Tenn. 1985)).

When our legislature enacted the statute proscribing conspiracy, it specifically prohibited multiple conspiracy convictions in cases in which multiple offenses result from the same agreement or conspiratorial relationship. Tenn. Code Ann. § 39-12-103(c); see also State v. Clifford Leon Farra, No. E2001-02235-CCA-R3-CD, 2003 WL 22908104, at *11 (Tenn. Crim. App. at Knoxville, Dec. 10, 2003). Tennessee Code Annotated section 39-12-103(c) provides that "[i]f a person conspires to commit a number of offenses, the person is guilty of one (1) conspiracy, so long as multiple offenses are the object of the same agreement or continuous conspiratorial relationship." Unquestionably, the especially aggravated robbery and the aggravated burglary in the present case were the object of the same agreement or conspiratorial relationship. Except for the offenses specified, the indictments charging the two conspiracies are identical. Both the indictment charging

conspiracy to commit especially aggravated robbery and the indictment charging conspiracy to commit aggravated burglary assert the following overt acts in furtherance of the conspiracy:

> 1. Aldrick Lillard and Ronallen Hardy discuss robbing Randy Betts.
>
> 2. Vanessa Claude and Aldrick D. Lillard went to Nashville, TN in Vanessa Claude's vehicle to pick-up (sic) Ronallen Hardy.
>
> 3. Ms. Claude, Mr. Lillard and Mr. Hardy went to the residence of Randy Betts for the purpose of robbing Randy Betts.
>
> 4. Randy Betts was shot upon entry into his residence.
>
> 5. Ms. Claude Pulled her vehicle up to the front door and Mr. Lillard and Mr. Hardy proceeded to load Ms. Claude's vehicle with Mr. Betts' property.

The proof at trial likewise established only one conspiracy: the appellant conspired to rob the victim at his home. In accordance with the mandate of Tennessee Code Annotated section 39-12-103(c), the two conspiracy convictions should be merged into a single conviction of conspiracy to commit especially aggravated robbery.

III. Conclusion

In sum, the trial court properly admitted the appellant's statement, and we affirm the appellant's convictions and sentences for murder, especially aggravated robbery, aggravated burglary, and conspiracy to commit especially aggravated robbery. Based on double jeopardy concerns and the mandate of Tennessee Code Annotated section 39-12-103(c), we merge the appellant's conspiracy to commit aggravated burglary conviction and his conspiracy to commit especially aggravated robbery conviction. We remand the case to the trial court for the correction of the judgments to reflect the merger of the conspiracy convictions.

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NORMA McGEE OGLE, JUDGE